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Maine Labor Relations Board Annual Report, Fiscal Year 2000

Maine Labor Relations Board

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ANNUAL REPORT
MAINE LABOR RELATIONS BOARD
Fiscal Year 2000

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1) (1988).

Introduction

During the past year, the Board had requests for services from all segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, there were some fluctuations in the Board's activities compared to the previous year. While there was a significant increase in the number of prohibited practice complaints filed, there was an overall decrease in representation activity this year. The number of voluntary agreements on new bargaining units did increase dramatically, however. In the dispute resolution area, the number of mediation requests received increased, there was a significant decrease in the number of fact-finding requests received, and no change in the number of fact-finding hearings conducted.

In September, Governor King nominated Public Chair Peter T. Dawson of Hallowell and Alternate Chair Pamela D. Chute of Brewer for reappointment to each serve an additional four-year term. Both nominees were confirmed by the Legislature. At the same time, the Governor nominated Alternate Chair Andrew M. Horton of Falmouth to become a Judge of the Maine District Court. Upon the confirmation of Mr. Horton's appointment by the Legislature, he resigned his seat on the Board. As of the date this report was prepared, no replacement had been nominated to fill the Alternate Chair vacancy. Employee Representative Gwendolyn Gatcomb of Winthrop, Employer Representative Karl Dornish, Jr., of Winslow, Alternate Employee Representatives Wayne W. Whitney of Brunswick and Carol B. Gilmore of Charleston, and Alternate Employer Representatives Edwin S. Hamm of Old Orchard Beach and Nelson J. Megna of Oakland all continued to serve in their respective capacities throughout the year.

The most significant administrative development this year was the drafting of new procedural rules for practice before the Board. The current rules were adopted in 1990 and have not been amended since. As noted in last year's report, the Board hosted a public forum for the public sector labor-management community to informally discuss the Board's practices and procedures. Approximately 30 union business agents, management representatives, and attorneys attended the forum. A wide variety of excellent suggestions were offered and discussed. As a result of the *meeting*,

several operational changes were implemented that did not require amending either statutes or rules. The Board incorporated some of the other ideas in its proposed new rules. The public hearing on the new rules was conducted on June 27 and the Board anticipates adopting new rules in the first half of the next fiscal year.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff continues to be the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help, and making appropriate referrals.

The Board continued to offer its advanced internet web site mentioned in the last two reports. This site, fully maintained and updated by Board staff, has been highly praised by the labor-management community. During the current rulemaking process, interested parties have been able to download the proposed rules, an executive summary of the major changes being proposed, and a document describing the origin of each of the new rules. This service has been very popular among the Board's client community.

Legislative Matters

The Board did not submit any legislative proposals during the Second Regular Session of the 119th Legislature; however, 5 bills considered by the Legislature would have had an impact on the Board or its affiliated organizations, the Panel of Mediators and the State Board of Arbitration and Conciliation. Two of the bills were intended to change the public sector collective bargaining process itself, one addressed the negotiation of educational policy issues, one would have effectively changed the definition of Judicial Branch employees, thereby altering the scope of that law, and one would have imposed numerous reporting requirements on the use of any part of union dues for political purposes. None of the bills were enacted.

Under current law, if the parties are unable to voluntarily settle their collective bargaining agreement, either party may submit the remaining issues for resolution through interest arbitration. The interest arbitrators' decision is binding on all issues except for controversies over salaries, pensions, and insurance, where their

recommendations are advisory only. After the parties have negotiated for a reasonable time on the issues remaining open after completion of interest arbitration, the public employer is permitted to implement its "last-best offer" in connection with issues concerning salaries, pensions, and insurance. Under L.D. 1358, An Act to Promote Stability in Labor Management Relations in the Public Sector, the terms and conditions of employment contained in a collective bargaining agreement would remain in effect until a new contract is executed. Public employers would be effectively precluded from making unilateral changes in salaries, pensions and insurance, even when they have negotiated in good faith and participated in good faith throughout the statutory dispute resolutions procedures. L.D. 1358 died between the two bodies of the Legislature.

L.D. 1989, An Act to Amend Binding Arbitration to Include Salaries, Pensions and Insurance for State, Legislative and Municipal Employees and to Provide a Process for Voting when a Public Employer's Last Offer Is Not Selected, would have amended the labor relations statutes by making interest arbitration awards binding on all issues, including wages, pensions, and insurance, for counties, school districts, the Maine Turnpike Authority, the Maine State Retirement System, and the various local utility and other special districts. If an arbitrators' award did not adopt the last, best offer of these employers, they could only seek review of the arbitrators' award in the Superior Court. With municipal employers, if the arbitration award did not adopt the last, best offer of the employer, the public employer could opt to submit the matter to a referendum vote at the next scheduled municipal election. If the voters failed to adopt the arbitrators' award, the matter would again be submitted to the arbitrators. The process would be similar for Executive, Legislative and Judicial Branch employees except that instead of a referendum, the Legislature would vote on the arbitrators' award, if the arbitrators did not adopt the employer's last, best offer. The measure was withdrawn at the request of its sponsor.

L.D. 987, An Act to Validate Voluntary Collective Bargaining Provisions that May Affect Educational Policies, would have addressed collective bargaining on educational policy matters in school districts. The current law controlling collective bargaining for school district employees provides that the public employer and the bargaining agent have the mutual obligation "[t]o confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration . . . except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies" Situations have arisen where a school department has agreed to an article in a collective bargaining agreement that controlled a matter of

educational policy but, later, sought to have the provision declared null and void by a court, on the grounds that entering into the agreement violated the cited statutory language. This measure would have permitted, but not required, school districts to negotiate over educational policy matters.

L.D. 1246, An Act to Protect the Rights of Judicial Employees, was designed to address a situation that had developed in recent years. The Judicial Branch had contracted out work traditionally performed by Judicial Branch employees by entering into a contract with a temporary employment agency, while retaining such direction and control over the work of such individuals that they probably would have been classified as employees under the common law principles of agency. A recent Law Court decision interpreting the State Employees Labor Relations Act considered the Legislative authorization of a position to be critical, rather than the common law test, in determining public employee status. The bill would have required that common law agency principles be applied in determining employment status pursuant to the Judicial Employees Labor Relations Act. The underlying dispute was resolved by the public employer and the bargaining agent and the measure was withdrawn at the request of the sponsor.

L.D. 1864, An Act Concerning the Political Use of Union Dues, would have required the Commissioner of Labor to advise employees of their right to decline to pay to their bargaining agent through payroll deduction any sums that the union would use for political purposes or political contributions. The bill would have required employees to provide annual written authorization for use of any of their dues for political contributions. L.D. 1864 would not have any impact on the withholding of "fair share" or "agency fees" through payroll deductions because of the limited purposes for which "agency fees" can be expended under current law. The bill was not enacted.

In addition, the Board staff monitored 3 other bills, attending public hearings and work sessions, and assisting Legislative committees in their consideration of matters with potential impact on collective bargaining or agency operations.

Bargaining Unit and Election Matters

During fiscal year 2000, the Board received 34 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 33 of these filings in FY 99, 39 in FY 98, 23 in FY 97 and in FY 96, and 28 in FY 95.

Of the 34 FY 00 filings, 16 were for municipal or county government units, 14 for educational units, 2 concerned State Executive Branch employees and 2 related to University Act employees. The unit agreements were filed by the following employee organizations:

Maine Education Association/NEA ¹	13 agreements
Teamsters Union Local 340	6
Maine State Employees Association	4
Town of Topsham Employee Association	3
AFSCME Council 93	2
American Federation of Teachers	1
Cumberland Public Works/Val Halla Maintenance Employees Association	1
International Association of Machinists	1
MSAD 39 Directors/Managers Association	1
Richmond Employee Association	1
Sanford Police Association	1

Thirteen (13) unit determination or clarification petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 00: 7 were for determinations, and 6 were for clarifications. None of the new unit petitions actually went to hearing; however, a formal decision was issued in one case that was decided on the basis of written submissions by the parties. Agreements were reached in 8 cases, 1 case was withdrawn, 1 was dismissed, and 2 are pending. Board agents did not conduct any hearings in any of the cases resolved this year, including those carried forward from previous years. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 90.9% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 20 unit petitions filed in FY 99, 17 in FY 98, 19 in FY 97, 9 in FY 96, and 17 in FY 95. The unit determination/clarification requests were filed by the following employee organizations:

Maine Education Association/NEA	6 petitions
Town of Topsham Employee Association	2
AFSCME Council 93	1
International Association of Machinists & Aerospace Workers	1
MSAD 39 Directors/Managers Association	1
Maine State Employees Association	1
Skowhegan Police Benovolent association	1

¹While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 00 there were 12 voluntary recognitions filed. Eight involved the Maine Education Association/NEA and 4 involved the Maine Association of Police. Twelve (12) bargaining agent election requests were filed in FY 00; 14 elections were actually held, including matters carried forward from FY 99, 1 election petition was dismissed, 1 was withdrawn and 3 matters are pending. The bargaining agent election petitions filed this year involved the following employee organizations:

Maine Education Association/NEA	7 petitions
American Federation of Teachers	1
International Association of Machinists	1
MSAD 39 Directors/Managers Association	1
Skowhegan Police Benevolent Association	1
Teamsters Union Local 340	1

In FY 99, there were 4 voluntary recognitions filed, 19 bargaining agent election requests received, and 13 elections held.

In addition to representation election requests, the Board received 6 requests for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. The results of the decertification/certification petitions were as follows:

<u>Petitioner</u>	<u>Incumbent Agent</u>	<u>Prevailed</u>
Rangeley Support Staff/MEA/NEA Kennebec County Deputies Ass'n Maine Association of Police	Teamsters Union Local 340 Teamsters Union Local 340 Int'l Bro. of Police Officers	MEA K.C.D.A. Disclaimer & Vol'y Recog.
Maine Association of Police	AFSCME, Council 93	Disclaimer & Vol'y Recog.
Maine Association of Police MSAD 51 Ed. Ass'n/MEA/NEA	Teamsters Union Local 340 MSAD 51 Bus Drivers Ass'n	M.A.P. MEA

The Board received 1 straight decertification petition in FY 00. No new union is involved in these petitions; rather, the petitioner is simply attempting to remove the incumbent agent. As of the date this report was prepared, the matter was pending.

There were 11 election matters carried over from FY 99. Consequently, there

were 30 such matters requiring attention during the fiscal year; this compares with 33 in FY 99, 36 in FY 98, 25 in FY 97, 26 in FY 96, and 22 in FY 95.

Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

The number of new mediation requests received during the fiscal year increased slightly. There were 73 new requests filed this year compared with 69 last year, 68 in FY 98, 74 in FY 97, 69 in FY 96, and 77 in FY 95. In addition to the new mediation requests received during FY 00, there were 20 matters carried over from FY 99 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year was 93, down from 101 in FY 99. During the downturn in the regional economy in the early 1990's, most parties were opting for one-year agreements, hoping that more favorable conditions would prevail the following year. As a result, many more agreements expired in FY 93 and FY 94 than would normally be expected. Beginning in mid-FY 1994, more parties resumed negotiating multi-year agreements. Given the statutory restriction that collective bargaining agreements not exceed three years' duration, last year's report anticipated continued growth in demand for mediation services. The marginal decline in demand this year reflects significant external factors affecting the bargaining process--continued improvement in the regional economy and increased state aid to education. These developments facilitated the bargaining process and reduced demand for mediation.

This year the settlement rate for cases where mediation was concluded, including carryovers from FY 99, improved considerably, returning to the trend of the preceding 3 years from the record low of 50% in FY 95. This year's settlement rate was 80.7%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to 82.1% in FY 1997, with a mean of 74.73%. Anecdotal evidence from the mediators and partisan representatives suggests that the continued robust performance of the state and regional economies resulted in the availability of additional resources to fund settlements this year.

Since both new filings and cases carried over from prior years contributed to the actual work load of the Panel in the course of the twelve-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. The following employee organizations filed requests for mediation services this year:

Maine Education Association/NEA	36 requests
Teamsters Union Local 340	21
Maine State Employees Association	4
AFSCME Council 93	3
American Federation of Teachers	2
International Association of Firefighters	2
Maine Association of Police	2
Int'l Ass'n of Machinists & Aerospace Workers	1
Maine State Troopers Association	1
Painters & Allied Trades District 35	1

The level of preventative mediation activity remained strong this year. We received 12 requests for preventative mediation services, 10 sets of negotiations were completed using the technique, resulting in 10 settlements. The negotiations were continuing in the other 6 cases; therefore, the technique had a success rate of 100% again this year. Last year, 2 cases were completed, resulting in 2 ratified successor collective bargaining agreements. This non-confrontational bargaining initiative is discussed in greater detail in the Annual Report of the Panel of Mediators.

Fact finding is the second step in the three-step statutory dispute resolution process. In Fiscal Year 2000 there were 15 fact-finding requests filed. Those requests represent a significant decrease from last year's level. Nine (9) petitions were withdrawn or otherwise settled, 12 requests went to hearing, and 4 petitions are pending hearing. Last year 12 fact-finding hearings were held. The following employee organizations filed requests for fact-finding services this year:

Maine Education Association/NEA	10 requests
International Association of Firefighters	2
Teamsters Union Local 340	2
AFSCME Council 93	1

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non-monetary issues. Salaries, pensions and insurance are

subject to interest arbitration; but, an award on these issues is only advisory. In recent years the Board has received few interest arbitration requests. None were received this year. Two were filed last year, 2 in FY 98, 1 in FY 97, 4 in FY 96, only one each in FY 95 and FY 94, and none in the preceding three years.

Although the public labor relations statutes require that arbitration awards be filed with the Board, they usually are not. This year, no interest arbitration reports were received. While we assume that there were no arbitration cases in the public sector during the year, it may be that parties have simply failed to provide proper notification to the Board.

Prohibited Practices

One of the Board's main responsibilities is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board. Twenty-six (26) complaints were filed in FY 00. This represents a significant increase over the FY 99 level. During the last 5 years, the number of complaints filed each year has fluctuated from a low of 17 to a high of 27, with the mean being 21. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 26 complaints filed in FY 00, there were 12 carryovers from FY 99, compared with 19 complaints and 16 carryovers last year. Board panels conducted 1 evidentiary hearing day involving 1 case during the year, compared with 2 in FY 99. Board members sitting singularly as prehearing officers held conferences in 7 cases, compared with 6 in FY 99. The Board issued formal Decisions and Orders in 3 cases. Five (5) cases have been continued indefinitely at the request of one or both parties. Such a continuance, or inactivity, usually indicates that the parties are attempting to resolve their differences, even though a complaint has been filed to preserve the complainants' rights, given the Board's six-month statute of limitations. Eleven (11) complaints were dismissed or withdrawn at the request of the parties. Eleven (11) complaints await prehearing and hearing.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives. A particularly difficult situation between two parties, involving two separate prohibited practice complaints and a related unit clarification petition, was

tentatively resolved through the latter approach. The parties were able to agree to a mechanism for resolving their differences through an arbitration procedure. Continuing a development introduced in FY 96, the services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing.

Prohibited practice complaints were filed by the following this year:

Maine Education Association/NEA	8 complaints
International Association of Fire Fighters	5
Individual complainants	3
American Federation of Teachers	3
Teamsters Union Local 340	2
American Fed. of State, County & Municipal Employees	2
Maine State Employees Association	2
International Association of Machinists	1

Appeals

No unit determination or unit clarification appeals were filed this year. One election appeal was filed. The Board dismissed the matter without prejudice at the request of the appellant.

One new case involving the Board was initiated in the courts this year. In *Susan Ouellette v. City of Caribou*, the Board held that the employer had unlawfully discriminated against the complainant because she had exercised the statutorily-protected right to union representation and also concluded that the employer's actions toward the complainant interfered with, restrained and coerced her in the free exercise of the rights guaranteed by the bargaining law. The City appealed the Board's decision in the Superior Court. The Court has remanded the case to the Board to consider the materiality of certain testimony the City wants the Board to hear. As a result, in the City's view, this will change the decision on the merits. The Board will consider the proffered evidence and the parties' relevant argument early in the next fiscal year.

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
Unit Determination/ Clarification Requests Number filed---	17	-47% 9	+ 111% 19	-10.5% 17	+ 17.7% 20	-35% 20
Agreements on Bargaining Unit (MLRB Form #1) Number filed---	28	-18% 23	-- 23	+ 69.6% 39	-15.4% 33	+ 3% 34
Voluntary Recognitions (MLRB Form #3) Number filed---	5	-40% 3	+ 66.7% 5	+ 40% 7	-42.9% 4	+ 200% 12
Bargaining Agent Election Requests Number filed---	15	-- 15	+ 20% 18	-11.1% 16	+ 18.75% 19	-36.8% 12
Decertification Election Requests Number filed---	1	-- 1	+ 200% 3	+ 167% 8	-37.5% 5	-80% 1
Decert./Certification Election Requests Number filed---	2	+ 100% 4	-75% 1	+ 100% 2	+ 150% 5	+ 20% 6
Mediation Requests Number filed---	77	-10% 69	+ 7.25% 74	-8.1% 68	+ 1.5% 69	+ 5.8% 73
Fact-Finding Requests Number filed---	20	+ 20% 21	-33.33% 14	+ 35.7% 19	+ 15.8% 22	-31.8% 15
Prohibited Practice Complaints Number filed---	17	+ 59% 27	-18.5% 22	-9.1% 20	-5% 19	+ 36.8% 26

The above table indicates that the demand for the Board's different services varied during the fiscal year. The decline in organizational activity this year may be an indication that such activity is nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and fire fighter units, predated the establishment of the agency. As the number of organized employees approaches the universe of those eligible, the number of new units created each year will decline. On the other hand, although the rate of increase has declined,

there are more units now than ever before. A larger number of units means more requests for changes in unit composition, more elections to change or oust bargaining agents, a greater potential for prohibited practice complaints, and increased demand for dispute resolution services.

During FY 00, public sector labor-management relations in Maine continued to mature. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of more mature labor relations is evidenced by the strong demand for mediation services, particularly the increased demand for non-confrontational preventative mediation services, and the continued willingness of parties to settle prohibited practice cases. The only real negative development this year was the significant increase in the number of prohibited practice complaints received. In sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 30th day of June, 2000.

Respectfully submitted,



Marc P. Ayotte
Executive Director
Maine Labor Relations Board